

REMARKS

Applicant submits that the present amendment is fully responsive to the Office Action dated July 10, 2007 and, thus, the application is in condition for allowance.

By this reply, no claims are amended. Claims 50, 53, 56, 57, 59-62 and 65-67 remain pending. Of the pending claims, claims 50, 53, 59 and 62 are independent. An expedited review and allowance of the application is respectfully requested.

In the outstanding Office Action, the disclosure is objected to for not disclosing the recitation of “the opening in the jaw is partially open” as recited in claims 56, 60 and 65.

Applicant respectfully traverses.

The language used in the claims have been clearly considered in a number of prior Office Actions, and it is unclear why it is now of consequence. This language is clearly shown in the drawings as presented throughout the disclosure, and one having ordinary skill in the art would be well cognizant of the meaning of “the opening in the jaw is partially open” when considered in light of the specification, the claims and the prosecution history. A typical opening is usually in a shape of an “O” with closed walls all around which does not allow any elongated object (such as a stuture) placed within it to slip out of it tangentially – this scenario would be that of a completely closed opening. In contrast, in these recited claims, the opening is “partially open,” meaning that the “O” has a break within its wall to allow a suture to pass tangentially therethrough, which would have been impossible had the opening not been there as int ch completely closed scenario. Thus, the opening is “partially open” to allow for such movement. It is dismaying that Applicant has to now rehash and re-address all of the prior issues which were addressed and accepted by the US Patent Office in prior Office Actions. Applicant respectfully requests the withdrawal of the objection and the allowance of the claims.

In the outstanding Office Action, claims 56, 60 and 65 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for use of the same offending claim language as recited above. Applicant respectfully traverses.

The same response and reasoning as described above is also applicable here. Thus, the rejection should be withdrawn and the application allowed to issue.

In the outstanding Office Action, claims 50, 59, 60, 62, 65 and 67 were rejected under 35 U.S.C. § 102(b) as being anticipated by Caspari (U.S. Pat No. 4,923,461). It is asserted that Caspari discloses a device that is substantially the same as the present invention as recited in the pending claims. Thus, it is concluded that Caspari anticipates the present invention as recited in the present claims. Applicant respectfully traverses.

Using the same reference, claims 61 and 66 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Caspari. It is asserted that Caspari discloses all of the features of the recited claims but for an eyelet. It is further concluded that such a feature would have been obvious. Thus, it is concluded that Caspari obviates the present invention as recited in the present claims. Applicant respectfully traverses.

Caspari does not disclose or fairly suggest the present invention as recited in the pending claims because Caspari cannot teach, for example, a device with a closed jaw mechanism allowing a sliding projection to traverse one of the jaws while closed, the projection having multiple stress shapes, and projecting through soft tissue. In Caspari, the needle is fixed into a given, rigid shape and secured to the lower component of the jaw. See Fig. 2. In Caspari, the jaws when actuated immediately puncture tissue as the clamp is actuated. This prevents placement of the clamp and subsequent puncturing with a moveable needle that can be advanced and retracted relative to the jaws, as is the technique recited in the present claims. The present

invention as recited in the pending claims allow for a moveable puncturing projection which is completely difference than Caspari because, for example, such motion may be made by a malleable needle while the jaws are closed.

Furthermore, in Caspari, only the suture and jaws move. The "needle" is firmly attached to the lower jaw and not flexible. The thumb wheel advances the suture through the hollow needle after the needle pierces the tissue. The needle cannot move as it is fixed to the jaw. In fact, the needle does not advance the suture but only provides a channel for some other mechanism (i.e., thumb wheel) to advance the suture. Hence, attaching an eyelet is not feasible nor obvious with a non-mobile needle. Thus, for at least these reasons, Caspari cannot anticipate or obviate the present invention as recited in the pending claims because it lacks a number of claimed features of the present invention.

In the outstanding Office Action, claims 53, 56 and 57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Caspari in view of Middleman (U.S. Pat. No. 5,820,628). It is asserted that Caspari discloses substantially the same invention as recited in the pending claims but for an elongate member having a first resting configuration, a second stresses configuration and an eyelet. It is further asserted that Middleman does disclose such deficiencies and thus it is concluded that the combination would render the present claims as obvious. Applicant respectfully traverses.

Neither Caspari nor Middleman, nor any other reference of record, alone or in combination, can anticipate or fairly suggest the present invention as recited in the pending claims. Caspari fails as a primary reference because it does not teach the features of the pending claims for at least the reasons stated above. Further, Middleman only shows a flexible needle with no jaw or grasping device whatsoever. All of the Middleman techniques are designed to go

around structures rather than pierce through them. In contrast, the Caspari reference discloses piercing. Thus, the references teach away from each other and cannot be combinable in any way. There is just no motivation or suggestion to completely change how the device in one reference works to combine with the way the device in another reference works. Even if there was such a teaching, *arguendo*, the combination would still not result in the present invention as recited in the pending claims.

If any fees are associated with the entering and consideration of this request for consideration, please charge such fees to our Deposit Account 50-2882.

As all of the outstanding rejections have been traversed and all of the claims are believed to be in condition for allowance, Applicant respectfully requests issuance of a Notice of Allowance. If the undersigned attorney can assist in any matters regarding examination of this application, Examiner is encouraged to call at the number listed below.

Respectfully submitted,

Date: 24 October 2008

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